

REMARKS

This Amendment is in response to the Office Action dated September 12, 2006.
All objections and rejections are respectfully traversed.

Claims 1-43 are in the case.

Claim 1 is currently amended.

New claims 40-43 are currently added.

Request for Interview

The Applicant respectfully requests a telephonic interview with the Examiner after the Examiner has had an opportunity to consider this Amendment, but before the issuance of the next Office Action. The Applicant may be reached at 617-951-3074.

Allowable Subject Matter:

Applicant gratefully acknowledges the Examiner's finding of allowable subject matter in claim 13-15. It is respectfully requested that the objection to claims 13 – 15 be held in abeyance pending resolution of the remaining objections and rejections.

Incorporation of Material:

The Examiner erroneously indicated that certain materials noted in the specification as incorporated were not properly incorporated by reference. Applicant respectfully submits that each of the documents referred to in the specification are properly expressly incorporated by reference on page 1 of the specification.

Objections to the Drawings:

The Examiner erroneously indicated that (1) replication agent and (2) plurality of standalone headers; are not shown in the drawings. Applicant respectfully submits that a replication agent is shown in Fig. 6, item 638. Applicant submits that a plurality of stand

alone headers are shown in Fig. 9 in items 902 and 904 which are described as stand alone headers on page 26 line 18 and page 27 line 10 respectively.

The Examiner correctly indicated that (3) the data set header is not shown in the drawings. Applicant respectfully submits that the recitation of “the data set header” in claim 1 was a clerical error. Claim 1 is amended herein to change the data set header” to a “data following header”.

Applicant respectfully requests that the objection to the drawings be withdrawn.

Rejections under 35 U.S.C. §112

At page 5 of the Office Action, claim 1 was rejected under 35 U.S.C. §112, first paragraph, because the Examiner erroneously asserted that the following elements can not be found in the specification: standalone headers, replication agent, extended attribute field, and extended attribute.

Applicant respectfully submits that “standalone headers” are described on pages 12, 25, 26 and 27 of the specification. “Replication agent” is recited on page 22, line 22 of the specification and shown in Fig. 6. “Extended attribute field” is recited on page 12, line 11 of the specification. Extended attribute is recited on page 12, lines 13 and 17 of the specification. “Data sets” and information associated with the data sets is described throughout the specification. The term “data set header” does not appear in claim 1 as currently amended.

Applicant respectfully requests that the rejections under 35 U.S.C. §112, first paragraph, be withdrawn.

At page 5 of the Office Action, claim 1 was rejected under 35 U.S.C. §112, second paragraph, in part because the Examiner indicted that it is unclear how many headers and identifiers are being claimed. Applicant respectfully submits that a the clear language of the claims recites “a plurality of standalone headers” and “ a data following header.” Applicant respectfully urges that the claim language is not indefinite and that no further enumeration of the headers should be required. The “identifiers” and “data set header” objected to by the Examiner are deleted from claim 1 by the current amendment.

Applicant respectfully submits that “the data set information” has antecedent basis in the line 1 of the preamble of claim 1.

Applicant respectfully submits that the rejections under 35 U.S.C. §102, second paragraph, have been overcome and requests that the rejections be withdrawn.

Rejections under 35 U.S.C. §102

At page 6 of the Office Action, claims 1-3, 5, 7, 9-12 and 16 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Application Publication No. 2004/0022278 to Thomas et al. (hereinafter “Thomas”). Claim 1, representative in part of the other rejected claims sets forth:

1. A system for transmitting a data stream having data set information, the system comprising:
 - a destination system having a replica residing therein;**
 - a source system in communication with the destination system, the source system having a replication agent executing thereon, the replication agent adapted to generate the data stream, the data stream including:
 - a plurality of standalone headers, each of the plurality of standalone headers being representative of a plurality of data stream characteristics; and
 - a data following header, the data following header including an extended attribute field that associates an extended attribute with the data set information.

The Examiner erroneously indicated that Thomas discloses “**a destination system having a replica residing therein**” as particularly claimed. The Examiner did not characterize Thomas other than to point to Fig. 1 item 17b of Thomas as disclosing this claim element. Applicant respectfully submits that item 17b of Fig. 1 of Thomas is a “data receiver/user device” (Paragraph 65, line 20) for receiving broadcasts (i.e. a television or radio) and has nothing to do with replication of data. Accordingly, Applicant submits that, contrary to the Examiner’s assertion, Thomas does not disclose “a destination system **having a replica residing therein**”.

Further, Applicant respectfully submits that Thomas is non-analogous art in the field of “television and other types of broadcast media [which] are effective for distributing entertainment and information to large numbers of recipients simultaneously.” Thomas, paragraph 2, lines 1-3. Contrastingly, the claimed invention is in the field of “asynchronous mirroring or replication of data and more particularly the transmission of data from a source system to a destination system that may utilize differing platform architectures, file systems and/or protocols.” Page 2, lines 8-10. The widely different fields of invention show that item 17b of Thomas does not teach or suggest several of the limitations of claim 1 such as **“a destination system having a replica residing therein”** and **“a replication agent”** as particularly claimed because Thomas has nothing to do with data replication.

Since Thomas does not teach or suggest each of the elements of claim 1, Applicant respectfully submits that the rejection of claim 1 under 35 U.S.C. §102(e) is improper and should be withdrawn. Applicant respectfully submits that each of the rejections under 35 U.S.C. 102(e) are improper and should be withdrawn for the reasons cited with reference to claim 1.

Rejections under 35 U.S.C. §103

At page 8 of the Office Action, claim 4 was rejected under 35 U.S.C. §103 over Thomas in view of U.S. Patent Application Publication No. 2003/0066062 to Brannock et al. (hereinafter “Brannock”).

At page 9 of the Office Action, claims 6 and 8 were rejected under 35 U.S.C. §103 over Thomas in view of U.S. Patent Application Publication No. 2001/0001877 to French et al. (hereinafter “French”).

Applicant respectfully submits that the rejections under 35 U.S.C. §103 are improper and should be withdrawn for the reasons set forth above with respect to claim 1.

Additional Rejections


At page 9 of the Office Action, claims 17 – 39 were rejected for the same reasons as claims 1-16. Regarding these reasons, Applicant respectfully submits that the rejections of claims 17 – 39 should be withdrawn for the reasons cited herein regarding claim 1-16. Applicant further submits that claims 17 – 39 are different from claims 1-16, and that the Examiner has not provided legally sufficient reasons to reject these claims. Further, Applicant respectfully submits that claims 24-35 contain subject matter similar to the subject matter of claims 23-15 which the Examiner has indicated is allowable. Accordingly, Applicant submits that the rejections of claims 17-39 are improper and should be withdrawn.

All independent claims are believed to be in condition for allowance.

All dependent claims are believed to be dependent from allowable independent claims, and accordingly in condition for allowance.

Please charge any additional fee occasioned by this paper to our Deposit Account
No. 03-1237.

Respectfully submitted,



Joseph P. Quinn
Reg. No. 45,029
CESARI AND MCKENNA, LLP
88 Black Falcon Avenue
Boston, MA 02210-2414
(617) 951-2500